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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,889	02/25/2004	Joel R. Cannon	3034.03US02	2054
24113	7590	02/21/2006		
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100				
			EXAMINER JIANG, CHEN WEN	
			ART UNIT 3744	PAPER NUMBER

DATE MAILED: 02/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.		Applicant(s)	
	10/786,889		CANNON, JOEL R.	
	Examiner		Art Unit	
	Chen-Wen Jiang		3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20040714</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 1-8 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over “ComfortChoice” IDS filed 7/14/2004 (plus information download from website provided by Applicant) in view of Wewalaarachchi et al. (U.S. Patent Number 6,477,434).

“ComfortChoice” IDS filed 7/14/2004 disclose interactive web sites enabling adjustment/programming of thermostats. The user is able to remotely change their thermostat settings. FIG. 1 of this Application depicts their web page including weekday and weekend schedules, save/copy/close delete schedule, four sections within a day and five schedules. It provides a plurality of time lines, one for each day in a closely presented, side-by-side arrangement, with a temperature display box provided at the mid-point position of each time section. The time sections are defined by sliding arrows, with the temperature display box

following the arrows. However, “ComfortChoice” does not disclose sliding temperature setting. Wewalaarachchi et al. disclose different temperature settings can be used in the thermostat, such as buttons to increment, decrement, or toggle a value; to pulse a value while depressed; numeric input dialogs for direct input of a numeric amount; and slider controls for continuously variable inputs. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of “ComfortChoice” with a slider in view of Wewalaarachchi et al. so as to set temperature. Vertical and horizontal arrangements and display location are design choice based on the arrangements of the thermostat. Fig.12 shows the slider and temperature display on the thermostat. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *Ir re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over “ComfortChoice” / Wewalaarachchi et al. as applied to claim 1 above, and further in view of Proffitt et al. (U.S. Patent Number 6,254,009).

“ComfortChoice” / Wewalaarachchi et al. disclose the invention substantially as claimed. However, “ComfortChoice” / Wewalaarachchi et al. do not disclose override option. Proffitt et al. disclose override option in the same field of endeavor for the purpose of override programmed setting. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of “ComfortChoice” /

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Wewalaarachchi et al. with an override option in view of Proffitt et al. so as to override programmed setting.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (571) 272-4809.

The examiner can normally be reached on Monday-Thursday from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang  
Primary Examiner

